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PLEASE REPLY TO ROSELAND, NJ

April 30, 2013

VIA ECF

Honorable Esther Salas, U.S.D.J.

United States District Court for the District of New Jersey

Martin Luther King Jr. Bldg. & U.S. Courthouse

50 Walnut Street

Newark, New Jersey 07101

Re: Roche Palo Alto LLC et al. v. Lupin Pharm., Inc. et al.
Civil Action No. 2:10-3561 (ES/SCM)

Dear Judge Salas:

We write pursuant to Your Honor's instructions today regarding certain objections that were raised during the trial. In his non-infringement report, Dr. Mayersohn gave no opinion that Dr. Weiner's methodology is "generally unacceptable." Instead, he had specific critiques about accumulation ratios and nonlinearity ratios. (*See* Mayersohn Report at ¶¶8 and 13.) Dr. Mayersohn also provided none of the statistics or data about MARISA contained in Lupin's demonstratives. A different Lupin expert, Dr. Kay, supplied statistical data, primarily in connection with validity. Dr. Mayersohn neither relied on Dr. Kay nor had any contact with him. Accordingly, Dr. Mayersohn's proposed opinions on these issues – reflected on Slides DDX-29 and 30 and the titles of Slides DDX-31-34—should not be allowed.

In Court, Lupin represented that paragraph 8 of Dr. Mayersohn's Responsive Report contains the opinion that Dr. Weiner's methodology was not generally accepted. It does not. Rather, Dr. Mayesohn opined that it was not appropriate for Dr. Weiner to calculate 2 accumulation ratios for each subject (one for Cmax and one for Ctough), contending that each subject should only have 1 accumulation ratio. Because Dr. Weiner convincingly refuted that

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opinion in his reply report, Lupin now seeks to offer different opinions from Dr. Mayersohn as to why Dr. Weiner's methodology is not "generally acceptable."

Lupin's lawyers attempt to excuse this new opinion by saying they had no notice before Friday that Dr. Weiner's approach had been accepted by a court in another case, specifically Allergan. First, that does not matter because Dr. Weiner laid out his methodology and if Dr. Mayersohn thought it was generally unacceptable, he should have laid this out in his report. In any event, Lupin cannot be surprised by that fact because Dr. Weiner told them this at his deposition (Dep. 80:17-81:2.) In addition, Dr. Mayersohn himself was the opposing generic's expert in the Allergan case.

Counsel for plaintiffs note that all this results from trial testimony from Dr. Weiner that drew not a single objection that it was outside the scope of his report or new.

As for the statistics and specific data regarding the MARISA study, these are nowhere in Dr. Mayersohn's report. Rather, Dr. Mayersohn in his report states "I understand from counsel that another expert has reviewed the MARISA data . . . I understand that further analysis concerning the relative validity of the MARISA and CVT 3015 data is provided by another Lupin expert." (Mayersohn Report ¶¶45-46). And Dr. Mayersohn told us in his deposition that he has never spoken with any other expert in this case or read their reports. (Mayersohn 109:20-111:3.) Lupin attempts to excuse these new opinions by telling the Court that they did not have this data at the time Dr. Mayersohn wrote his responsive report. This also, is not the case. The data was provided in Dr. Weiner's Opening Report in Appendix 2 (now PTX-675). And not surprising, Dr. Kay in his responding report conduct statistical analysis on this very data.

While plaintiffs would rather not have to make such objections and slow down the trial, Lupin's attorneys are attempting to present new opinions from Dr. Mayersohn not previously disclosed.

We appreciate the Court's continued attention to this matter.

Respectfully submitted,

s/Liza M. Walsh

Liza M. Walsh

cc: All Counsel of Record (via ECF and email)